"Conley and His Counsel Are Wise—Their Hope Is That the Detectives Will Save Negro From a Confession, Giving Him Immunity, Provided He Continues to Put Guilt on Frank"

Several sensational points are contained in the written answer which Rosser & Brandon, attorneys for Leo M. Frank, made Friday morning to the rule nisi issued by Judge L. S. Roan calling upon Leo M. Frank, Newt Lee, or any other person suspected of the murder of Mary Phagan, or any citizen of the state of Georgia, to show cause why James Conley, the negro sweeper, should not be released as a material witness.

This answer was filed by Attorney Rosser, who referred to it as a "protest" and who asked that it be made a part of the court record. In it the attorneys for Frank declare that "to enact the farce in the court's presence of releasing the negro and immediately return him to his wet nurses at the police station would resemble child's play."

The intimation is very clearly made that the solicitor general and the detectives wish to keep Conley in their custody at police headquarters in order that they may bolster up his sworn confessions and that they dare not let the negro talk freely for fear that he may destroy the value of "one of a number of contradictory statements made by him."

"That the detectives should wish to keep Conley in custody and entertain him at the city's expense is not at all surprising," says the answer. "They have already extracted from him extravagant, unthinkable confessions, three or four in number. To these statements they have given the widest publicity, and to the credibility of the last one they have staked their reputations and hope of place.

"Upon the constancy and stability of this witness they have staked their […]

(continued on Page 7, Col. 1.)

ROSSER DECLARES DETECTIVES DARE NOT LET CONLEY TALK

(Continued from Page 1.)

[…] all. They would be less than human if they did not bend all their power and ingenuity in holding him to his present statement, adding to and taking therefrom only such things as will aid its credibility."

The point is made that Detective Chief Lanford is not the proper custodian for Conley, but that he should be […] and keeping of the sheriff who is a nonpartisan official.

Asserting that the facts in the case apart from Conley's own confession, point most strongly to him as the murderer of Mary Phagan, the answer goes on to recite a history of the negro's conduct on the day of the murder and […].

"There are some facts well known to the public and to the detectives showing Conley's guilt," it is declared. "There are other powerful facts which could rapidly be brought before the grand jury."

Two of the concluding paragraphs in the answer follow.

The detectives, obsessed as they are, with the assumption that Conley is a fool and not a murderer, are unfit to keep him in their custody and unlimited power. Under their protecting care Conley, instead of being left to tell the truth will at length deceive himself into the belief that instead of being a murderer being an unfortunate victim.

Conley and his counsel are wise. There is for them no other hope than for the detectives to keep Conley and save him from a confession that he committed the crime, giving him immunity provided he continues to put the guilt on Frank.

TEXT OF ANSWER.

Following is the answer in full:

"In [word(s) illegible]

"Application of Hugh M. Dorsey, solicitor general to release James Conley from legal custody.

"In answer to the petition and order in the above stated cause, served upon us as attorneys for Leo M. Frank, we herewith answer and show cause as follow:

"1. If the intention of the solicitor general is to discharge the negro from custody because [1 word illegible] he is in fact not a material witness against Frank or that although he is a material witness, his integrity and character are such that he ought to have his liberty and be trusted to obey the subpoena of this court, then considered as a witness only, he ought to be discharged and indeed he should not have been imprisoned at all. But in such a case to enact the farce in the court's presence of releasing the negro and immediately return him to his wet nurses at the police station would resemble child's play.

"2. But if the solicitor believes that one of a number of contradictory statements made by the negro may, if properly preserved, be made valuable in the prosecution of Frank and that the negro may destroy its value if left free to talk, and in order to stop his mouth it is necessary that the detectives should keep him in charge, then we think we have the right to protest against any order of a court of justice that winks at such a purpose.

"3. We are constrained to the conclusion that it is not the purpose of any reason to release this negro, but, by obtaining the order here sought, continue the present, illegal confinement.

FRANK DEEPLY INTERESTED.

"4. But Frank is himself deeply in interested in this proceeding. That the consent of the solicitor and the will of the negro is all that is required to reverse the will of the law, is erroneous. The state has the right in the interest of justice to put a witness in custody, but where in custody and in whose custody is of the highest importance. The law has given such custody to the sheriff and wisely so. The sheriff is not a prosecutor, the jail itself is not usually a place of punishment, but a temporary place of

detention. The sheriff is supposed to stand impartially between the state and his prisoners, and may be trusted neither to condole, threaten, nor suppress testimony by third degree methods. The law never meant to place a witness who, for lack of character, needs confinement under the control of a partisan prosecutor.

"5. That the detectives should wish to keep Conley in custody and entertain him at the city's expense, is not at all surprising. They have already extracted from him extravagant, unthinkable confessions three or four in number. To these statements they have given the widest publicity, and to the credibility of the last one they have asked their reputations and hope of place.

"6. Upon the constancy and stability of this witness, they have staked their all. They would be less than human if they did not bend all their power and ingenuity in holding him to his present statement, adding to and taking there from only such things as will and its credibility.

LANFORD NOT A PROPER CUSTODIAN.

"Can any fair-minded man believe that Lanford is a fair man to be the custodian of this ignorant negro? What chance would he have to retract any lies he may have told, or if in a repentant mood he should wish to tell the truth? This negro in the city prison, in the power of Lanford, apart from all questions of truth, would be just as dangerous as Lanford would wish him to be. No one knows that better than Lanford and no one would feel it as acutely as will this negro.

"How well Lanford knows it can be seen from his interview in the Atlanta Georgian of June 12. In that interview he demonstrated that he thinks he has full, unrestricted ownership of this negro. He graciously expresses his willingness for this negro to go before the grand jury upon such terms as he suggests. Neither the negro, nor the negro's lawyer, nor the grand jury, is considered. Nor was this court to be consulted—his will and not the order of

this court was to determine when and under what circumstances the negro should leave the police station.

"If Lanford vaunts in the face of jury and court his power over this negro, what must be his bearing when he deals privately with the negro himself? What chance has he to abstract a lie or add a truth to the foolish statement which Lanford approves and wishes to maintain? If this man will, when he is holding this negro under your honor's order, declare such ownership over this negro's person and movements, to what length would he go if the court releases its power over him and turns him over to Lanford's unrestricted power?

"6. It is just to Frank, as well as in the interest of public justice, that this negro should be detained by unbiased, fair men, whose reputations and positions are not at stake. The law recognizes this right and has put that duty upon the sheriff. Will there be less fairness and less decency in the county jail than in the police station? When did Lanford become a wiser, fairer, better man than the sheriff of this county?

"7. Apart from this negro's position as a witness, his detention in the custody of the detectives would be a public calamity. Many unbiased people believe this negro is the murderer of little Mary Phagan. The facts of the case, apart from his own confession, point most strongly to him as the guilty man.

FACTS AGAINST CONLEY.

"(a). On the day of the murder he was drunk and concealed himself in a position where he could readily commit the murder.

"(b). On Monday morning he was unduly excited, as much so as to arouse the suspicions of employees. On Saturday night after the murder he was caught hiding in his own house.

"(c). When the police were in the building he was caught hiding in an obscure part of the factory where he had no business.

"(d). When questioned about this conduct he said he would give a large sum to be a white man. When asked why he said he could then get safely past the police.

"(e). He for a long time persistently denied that he could write and did not admit that he could until longer denial was useless.

"(f). He was caught washing a shirt, a thing he had never done before, and when caught gave a foolish excuse.

"(g). He denied all participation in or knowledge of the crime until he was driven by the charge that he wrote the notes found near the body.

"(h). On May 18 he made a signed statement outlining his actions on April 26, making no mention of the murder.

"(i). On May 24 he made an affidavit. He said that on April 25, before the murder on April 26, he wrote the notes at the request of Frank for which Frank gave him cigarettes and $2.50, and added statements about Frank's people in Brooklyn and an inquiry by Frank as to why he should hang.

"(j). On May 28 Conley made a long affidavit, full of contradictions and absurdities: beginning as follows:

"I make this statement, my second statement in regard to the murder of Mary Phagan at the National Pencil factory. In my first statement, I made the statement that I went in the pencil factory on Friday, April 25, and went in Frank's office at five minutes to one, which is a mistake. I make this statement in regard to Friday in order that I might not be accused of knowing anything of this murder, for I thought if I put myself there on Saturday they might accuse me of having a hand in it, and I now make MY SECOND AND LAST STATEMENT regarding the matter freely and voluntarily, after thinking over the situation, and I have made up my mind to tell the whole truth and I make it freely and voluntarily without the promise of any reward or from force or fear of punishment in any way.

"(k). After this beginning he sets out with variations the writing of the notes on Saturday instead of on Friday, and in a long rambling statement his movements at home and on Peter street on Saturday and on Monday at the factory, most of which is wholly disconnected with the murder.

A THIRD STATEMENT.

"(1). On May 29 1913, although he had already sworn that he had made ‘his true, full and last statement,' he made another statement in which he purported to aid Mr. Frank in concealing the body of Mary Phagan. This statement is full of contradictions and wholly irreconcilable with itself and with the known facts surrounding the murder.

"(m). He closes this remarkable affidavit in the following words: ‘The reason I have not told this before is that I thought Mr. Frank would get out and help me out, but it seems that he is not going to get out and I decided to tell the whole truth about the matter.'

"(n). These are some facts well known to the public to the detectives, showing Conley's guilt. There are other powerful facts, which could readily be brought before the grand jury.'

"8. These incoherent, gibbering statements will, it is believed impress the grand jury if the negro Conley's case is submitted to it.

"(9). The grand jury can be trusted to scan these queer statements in the light of all the surrounding facts and circumstances and taken in connection with all other facts implicating Conley, they proclaim his guilty beyond all reasonable doubt.

"(10). The detectives, obsessed as they are with the assumption that Conley is a tool and not a murderer are unfit to keep him in their sole and unlimited power. Under their protecting care, Conley, instead of being left to tell the truth will at length deceive himself into the belief that instead of being a murderer he is an unfortunate victim.

"(11). That Conley and his counsel wish it is the best reason why it should be done. As long as he sticks to a story pleasing to the detectives, or builds upon that story as additions may be needed, he is assured that the detectives will save him as far as possible from the court and grand jury and will, so far as they can fix upon him no greater crime than a misdemeanor.

"(12). Conley and his counsel are wise. There is for them no other hope than for the detectives to keep Conley and save him from a confession that he committed the crime, giving him immunity, provided he continues to put the guilt on Frank.

"Respectfully submitted,

"ROSSER & BRANDON."